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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,031	06/06/2001	Linda Roskin	Roskin-1	7600

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Eric A. LaMorte  
985 Reading Avenue  
P.O. Box 434  
Yardley, PA 19067-1626

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 10/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

09/874,031

Applicant(s)

ROSKIN, LINDA

Examin r

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communicati n appears on the c ver sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 February 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5-7, 9-15, 17-20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,901,881 to McElroy.

Regarding Claim 11, McElroy teaches an assembly with a container having an open top end with a predetermined maximum width (Fig. 7 #30); an elastomeric cover (Fig. 7 #10 and Col. 3 line 35) element for covering the open top end, the cover element having an unstretched width that is smaller than the maximum width of the open top end wherein the cover element must be elastically stretched to a stretched width greater than the maximum width of the open top end to cover the open top end (Fig. 8 #10); a plurality of openings defined in the cover element (Fig. 2 #20).

Regarding Claim 12, McElroy inherently teaches the open top end of the container is not symmetrical and the cover element conforms to the open top end of the container when engaged with the open top of the container (Col. 2 line 14-21, Col. 1 line 11, and Col.8 line 40).

Regarding Claim 13, McElroy teaches the cover element has a planar top surface (Fig. 1 #12) and a peripheral wall that extends downwardly from the planar top surface (Fig. 1 and 3 #14).

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Regarding Claim 14, McElroy teaches a plurality of openings arranged in linear rows and columns on the planar top surface (Fig. 2 #20).

Regarding Claim 15, McElroy inherently teaches the openings are slots that enlarge when the cover is stretched (Col. 3 line 35 and Col. 8 line 12).

Regarding Claim 17, McElroy teaches the cover element has a circular peripheral shape (Fig. 2).

Regarding Claim 18, McElroy teaches the cover element has a polygonal peripheral shape (Fig. 11).

Regarding Claims 19 and 22, McElroy teaches a floral arrangement cover for a vase and method, the vase (Fig. 7 #30) having an open top; the cover has an elastic (Col. 3 line 35) planar top surface (Fig. 1 #12) in which are defined a plurality of openings (Fig. 2 #20); the cover has an elastic peripheral wall (Fig. 1 #14) that extends downwardly from the planar top surface, the elastic planar top and elastic peripheral wall being elastically stretchable to a stretched size (Fig. 8 #14) where the peripheral wall can receive the open top of the vase therein and the elastic planar top spans the open top of the vase. Wherein the peripheral wall engages the vase around the open top by contracting around the open top.

Regarding Claim 5, McElroy teaches the plurality of openings are symmetrically disposed throughout the planar top surface (Fig. 2 #20).

Regarding Claims 6 and 20, McElroy teaches the plurality of openings are arranged in linear rows and columns (Fig. 2 #20).

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Regarding Claim 7, McElroy inherently teaches the openings are slots that enlarge when the cover is stretched (Col. 3 line 35 and Col. 8 line 12).

Regarding Claim 9, McElroy teaches the cover element has a circular peripheral shape (Fig. 2).

Regarding Claim 10, McElroy teaches the cover element has a polygonal peripheral shape (Fig. 11).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,901,881 to McElroy in view of U.S. Patent No. 2,876,587 to Saks et al.

Regarding Claims 8 and 16, McElroy is silent on the cover element being translucent. However, Saks teaches a vase cover that is translucent (Saks Col. 2 line 13-14). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings since the modification is merely an aesthetic design choice selected to enhance the appearance of the assembly and for ease of monitoring the contents of container.

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Claims 5, 6, 7, 9, 10, and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EPO 0182453 to Turner in view of U.S. Patent No. 4,901,881 to McElroy.

Regarding Claims 19, 21, and 22, Turner teaches floral articles and the step of inserting floral arrangement through the plurality of openings in a cover of a container that has apertures in the planar surface (Turner Fig. 1 and 3). Turner is silent on the elastomeric cover. However, McElroy teaches a floral arrangement cover for a vase and method, the vase (Fig. 7 #30) having an open top; the cover has an elastic (Col. 3 line 35) planar top surface (Fig. 1 #12) in which are defined a plurality of openings (Fig. 2 #20); the cover has an elastic peripheral wall (Fig. 1 #14) that extends downwardly from the planar top surface, the elastic planar top and elastic peripheral wall being elastically stretchable to a stretched size (Fig. 8 #14) where the peripheral wall can receive the open top of the vase therein and the elastic planar top spans the open top of the vase. Wherein the peripheral wall engages the vase around the open top by contracting around the open top.

It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention with the teachings of an elastomeric cover to accommodate different size container/vases as taught by McElroy (McElroy Col. 2 line 14-21, Col. 1 line 11, and Col.8 line 40) since the modification is merely the selection of a known alternate equivalent cover means.

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Regarding Claim 5, Turner as modified teaches the plurality of openings are symmetrically disposed throughout the planar top surface (Turner Fig. 2 and McElroy Fig. 2 #20).

Regarding Claims 6 and 20, Turner as modified teaches the plurality of openings are arranged in linear rows and columns (Turner Fig. 2 and McElroy Fig. 2 #20).

Regarding Claim 7, Turner as modified inherently teaches the openings are slots that enlarge when the cover is stretched (McElroy Col. 3 line 35 and Col. 8 line 12).

Regarding Claim 9, Turner as modified teaches the cover element has a circular peripheral shape (McElroy Fig. 2).

Regarding Claim 10, Turner as modified teaches the cover element has a polygonal peripheral shape (McElroy Fig. 11).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EPO 0182453 to Turner as applied to claim 22 above, and further in view of U.S. Patent No. 2,876,587 to Saks et al.

Regarding Claim 8, McElroy is silent on the cover element being translucent. However, Saks teaches a vase cover that is translucent (Saks Col. 2 line 13-14). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings since the modification is merely an aesthetic design choice selected to enhance the appearance of the assembly and for ease of monitoring the contents of container.

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***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


U.S. Patent No. 5,036,994; U.S. Patent No. 3,862,614; and U.S. Patent No. 2,080,108.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV

  
PETER M. POON  
SUPERVISORY  
TECHNOLOGY CENTER 3643